



**Federal Communications Commission
Washington, D.C. 205543**

September 20, 2010

DA 10-1768

In Reply Refer to:

1800B3-VMM

NAL/Acct No. MB 20051810030

FRN: 0010315232

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Mr. James F. Small, Sr.
Central Georgia Broadcasting Company
P.O. Drawer 635
Madison, GA 30650

In re: WYTH(AM), Madison, Georgia
Facility ID No. 9884
File No. BR-20040510ACD

Dear Mr. Small:

The Chief, Audio Division, has before him an April 18, 2005, Request for Cancellation or Reduction of Proposed Forfeiture (“Request”) filed by Central Georgia Broadcasting Company (“Central”), former licensee of Station WYTH(AM), Madison, Georgia (“Station”).¹ Central requests cancellation of a March 16, 2005, Notice of Apparent Liability for a Forfeiture (“NAL”)² in the amount of seven thousand dollars (\$7,000) for violation of Section 73.3539 of the Commission’s Rules (“Rules”) and Section 301 of the Communications Act of 1934, as amended (“Act”),³ for Central’s failure to file a timely license renewal application for the Station and unauthorized operation of the Station after its license had expired.⁴ By this action, we cancel the NAL and admonish Central for violating Sections 73.3539 of the Rules and 301 of the Act.

Background. As noted in the NAL, the Station’s renewal application was due on December 1, 2003, four months prior to the April 1, 2004, license expiration date. According to Commission records, no such application was filed, and the Station’s license expired on April 1, 2004. The application was not filed until May 10, 2004, almost six weeks after the Station’s license expired. In response to the NAL, Central filed the subject Request stating that it is financially unable to pay the proposed forfeiture and requesting that its forfeiture be cancelled.

¹ Commission records show that Central filed an application for assignment of license of Station WYTH(AM) on December 6, 2004, from Central Georgia Broadcasting Company to Craig Baker and Debra Baker. *See* File No. BAL-20041206AAB. That application was granted on March 17, 2005, and consummated on May 15, 2005. Despite this assignment, Central remains liable for forfeiture for those violations occurring when the Station was under its stewardship. *See, e.g., Vista Point Communications, Inc.*, Memorandum Opinion and Order and Forfeiture Order, 14 FCC Rcd 140, 140 n.2 (MMB 1999) (finding licensee liable for forfeiture for violations of the Commission’s rules that took place when station was under its stewardship).

²Letter to Central Georgia Broadcasting Co. from Peter H. Doyle, reference 1800B3 (MB March 16, 2005).

³ 47 C.F.R. § 73.3539; 47 U.S.C. § 301.

⁴ The Commission granted the above-referenced license renewal application on March 16, 2005.

Discussion. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,⁵ Section 1.80 of the Rules,⁶ and the Commission's *Forfeiture Policy Statement*.⁷ In assessing forfeitures, Section 503(b)(2)(E) of the Act requires that we take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.⁸

Central requests that the forfeiture be cancelled based on the financial condition of the Station.⁹ The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the party against which the forfeiture is proposed submits: (1) federal tax returns for the most recent three year period; (2) financial statements prepared according to generally accepted accounting principles; or (3) some other reliable and objective documentation that accurately reflects the party's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.¹⁰

In general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture.¹¹ The Commission has found that the staff's use of gross revenues is a reasonable and useful yardstick to analyze a company's financial condition for forfeiture purposes.¹² In support of its Request, Central submits copies of its 2001, 2003 and 2003 federal income tax returns, specifying gross revenues in the amounts of \$12,726, \$11,163, \$12,281, respectively.¹³

We have examined Central's response to the *NAL* pursuant to the statutory factors above in conjunction with the *Policy Statement*. As a result of our review, we conclude that Central willfully violated Section 73.3539 of the Rules and willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended. However, after reviewing Central's claim of inability to pay and the supporting documentation, we believe that payment of the \$7,000 forfeiture, or any reduction thereof consistent with Commission precedent,¹⁴ would pose a financial hardship in view of Central's documented gross income. Accordingly, we cancel the proposed forfeiture.¹⁵ Nevertheless, we find that

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ *Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁸ 47 U.S.C. § 503(b)(2)(E).

⁹ Request at 1.

¹⁰ *See Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7441 (2004), *modified*, Memorandum Opinion and Forfeiture Order, 24 FCC Rcd 2206 (MB 2009) (reducing forfeiture amount after review of submitted federal tax returns demonstrated a financial hardship).

¹¹ *See PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992).

¹² *Id.*

¹³ *See* Request, Attachments 1-3.

¹⁴ *Grace Baptist Church*, Forfeiture Order, 25 FCC Rcd 7473 (MB 2010) (forfeiture reduced from 11.4 percent of licensee's average total revenue to 5 percent based on licensee's ability to pay); *Care Broadcasting, Inc.*, Forfeiture Order, 25 FCC Rcd 1411 (MB 2010) (forfeiture reduced from 11 percent of licensee's average total revenue to 5 percent based on licensee's ability to pay).

¹⁵ *Mr. Richard Marburger*, Letter, 24 FCC Rcd 13622 (MB 2009) (forfeiture cancelled because of licensee's inability to pay); *M. Scott Johnson, Esq.*, Letter, 24 FCC Rcd 11292 (MB 2009) (same); *Henry A. Solomon, Esq.*, Letter, 24 FCC Rcd 5505 (MB 2009) (same).

it is appropriate to admonish Central for its willful violation of Section 73.3539 of the Rules and willful and repeated violation of Section 301 of the Act.

Conclusion. In view of the foregoing, the Notice of Apparent Liability (NAL/Acct. No. MB20051810030) for violation of Sections 73.3539 of the Rules and 301 of the Act is hereby CANCELLED. Central is instead hereby ADMONISHED for its willful violation of Section 73.3539 of the Rules and willful and repeated violation of Section 301 of the Act.

Sincerely,

Peter H. Doyle, Chief
Audio Division
Media Bureau